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6 and DISABILITY RIGHTS
ENFORCEMENT, EDUCATION
7 SERVICES: HELPING YOU
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8

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 JAREK MOLSKI, an individual; and)
DISABILITY RIGHTS ENFORCEMENT,)
12 EDUCATION SERVICES:HELPING)
YOU HELP OTHERS, a California public)
13 benefit corporation,)

14 Plaintiffs,)

15 v.)

16 ROY'S DRIVE-IN; ESTATE OF JAMES)
F. RUSSELL; and ROGER PATTERSON,)
17 an individual dba ROY'S DRIVE-IN,)

18 Defendants.)
19 _____)
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CASE NO. C04-1983 HRL

Civil Rights

**COMPLAINT FOR INJUNCTIVE RELIEF
AND DAMAGES:**

1st CAUSE OF ACTION: For Denial of
Access by a Public Accommodation in
Violation of the Americans with Disabilities
Act of 1990 (42 U.S.C. §12101, *et seq.*)

2nd CAUSE OF ACTION: For Denial of Full
and Equal Access in Violation of California
Civil Code §§54, 54.1 and 54.3

3rd CAUSE OF ACTION: For Denial of
Accessible Sanitary Facilities in Violation of
California Health & Safety Code §19955, *et
seq.*

4th CAUSE OF ACTION: For Denial of
Access to Full and Equal Accommodations,
Advantages, Facilities, Privileges and/or
Services in Violation of California Civil Code
§51, *et seq.* (The Unruh Civil Rights Act)

5th CAUSE OF ACTION: For Unfair
Business Practices in Violation of California
Business and Professions Code §17200, *et seq.*

DEMAND FOR JURY

1 Plaintiffs JAREK MOLSKI, an individual; and DISABILITY RIGHTS
2 ENFORCEMENT, EDUCATION SERVICES: HELPING YOU HELP OTHERS, a
3 California public benefit corporation (hereinafter sometimes referred to as “DREES”),
4 complain of defendants ESTATE OF JAMES F. RUSSELL; and ROGER PATTERSON, an
5 individual dba ROY’S DRIVE-IN, and allege as follows:

6 **INTRODUCTION:**

7 1. This is a civil rights action for discrimination against persons with physical
8 disabilities, of which class plaintiff JAREK MOLSKI and the membership of DREES are
9 members, for failure to remove architectural barriers structural in nature at defendants’ ROY’S
10 DRIVE-IN, a place of public accommodation, thereby discriminatorily denying plaintiffs and
11 the class of other similarly situated persons with physical disabilities access to, the full and
12 equal enjoyment of, opportunity to participate in, and benefit from, the goods, facilities,
13 services, and accommodations thereof. Plaintiffs seek injunctive relief and damages pursuant
14 to the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*; California Civil
15 Code §§51, 51.5 and 54, *et seq.*; California Health & Safety Code §19955, *et seq.* and
16 California Business and Professions Code §17200, *et seq.*

17 2. Plaintiff JAREK MOLSKI is a person with physical disabilities who, on or
18 about May 23, 2003, was an invitee, guest, patron, customer at defendants’ ROY’S
19 DRIVE-IN, in the City of Salinas, California. At said time and place, defendants failed to
20 provide proper legal access to the ROY’S DRIVE-IN, “which is a public accommodation”
21 and/or a “public facility” including, but not limited to signage, entrance, men’s restroom and
22 women’s restroom. The denial of access was in violation of both federal and California legal
23 requirements, and plaintiff JAREK MOLSKI suffered violation of his civil rights to full and
24 equal access, and was embarrassed and humiliated.

25 **JURISDICTION AND VENUE:**

26 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.
27 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et*
28 *seq.* Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the

1 same nucleus of operative facts and arising out of the same transactions, are also brought
2 under parallel California law, whose goals are closely tied with the ADA, including but not
3 limited to violations of California Civil Code §51, *et seq.* and §54, *et seq.*, California Health
4 & Safety Code §19955 *et seq.*, including §19959; Title 24, California Building Standards
5 Code; and California Business and Professions Code §17200, *et seq.*

6 4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is
7 founded on the facts that the real property which is the subject of this action is located in this
8 district at/near 1306 N. Main Street, in the City of Salinas, County of Monterey, State of
9 California, and that plaintiffs' causes of action arose in this district.

10 **PARTIES:**

11 5. Plaintiff JAREK MOLSKI is a "physically handicapped person," a "physically
12 disabled person," and a "person with physical disabilities." (Hereinafter the terms "physically
13 disabled," "physically handicapped" and "person with physical disabilities" are used
14 interchangeably, as these words have similar or identical common usage and legal meaning,
15 but the legislative scheme in Part 5.5 of the Health & Safety Code uses the term "physically
16 handicapped persons" and the Unruh Civil Rights Act, §§51, 51.5, 54, 54.1 and 55, and other
17 statutory measures refer to protection of the rights of "physically disabled persons." Plaintiff
18 JAREK MOLSKI is a "person with physical disabilities," as defined by all applicable
19 California and United States laws. Plaintiff JAREK MOLSKI is a paraplegic. Plaintiff
20 JAREK MOLSKI requires the use of a wheelchair to travel about in public. Consequently,
21 plaintiff JAREK MOLSKI is a member of that portion of the public whose rights are protected
22 by the provisions of Health & Safety Code §19955, *et seq.* (entitled "Access to Public
23 Accommodations by Physically Handicapped Persons") and the protections of the Unruh Civil
24 Rights Act, Civil Code §§51, 51.5 and 54, *et seq.* and California Business and Professions
25 Code §17200, *et seq.*

26 6. Plaintiff DISABILITY RIGHTS ENFORCEMENT, EDUCATION SERVICES:
27 HELPING YOU HELP OTHERS ("DREES") is a nonprofit (501(c)(3)) organization that
28 works with persons with disabilities to empower them to be independent in American society.

1 DREES accomplishes its goals and purposes through education on disability issues,
2 enforcement of the rights of persons with disabilities, and the provision of services to persons
3 with disabilities, the general public, public agencies and the private business sector.

4 7. Defendants ESTATE OF JAMES F. RUSSELL; and ROGER PATTERSON,
5 an individual dba ROY'S DRIVE-IN (hereinafter alternatively collectively referred to as
6 "defendants") are the owners and operators, lessors and/or lessees, or agents of the owners,
7 lessors and/or lessees, and/or alter egos, franchisors and/or franchisees, of the building and/or
8 buildings which constitute a public facility in and of itself, occupied by ROY'S DRIVE-IN, a
9 public accommodation located at/near 1306 N. Main Street, Salinas, California, and subject to
10 the requirements of California state law requiring full and equal access to public facilities
11 pursuant to 1995 of the Health & Safety Code, and §§51, 51.5, 52(a), 54.1 and 54.3 of the
12 Civil Code, and subject to Title III of the Americans with Disabilities Act of 1990, and to all
13 other legal requirements referred to in this complaint.

14 8. At all times relevant to this complaint, defendants ESTATE OF JAMES F.
15 RUSSELL; and ROGER PATTERSON, an individual dba ROY'S DRIVE-IN, are the lessees,
16 or agents of the lessees, and/or lessors, of said premises, and/or alter egos of the lessees,
17 lessors and their agents, and own and operate in joint enterprise the subject ROY'S DRIVE-IN
18 as a public facility at/near 1306 N. Main Street, Salinas, California. This business is open to
19 the general public and conducts business therein. The business operating on said premises is a
20 "public accommodation" or "public facility" subject to the requirements of California Civil
21 Code §54, *et seq.* Plaintiffs do not know the relative responsibilities of each of the defendants
22 in the operation of the facilities herein complained of, and allege a joint venture and common
23 enterprise by all such defendants.

24 9. At all times relevant to this complaint, defendants ESTATE OF JAMES F.
25 RUSSELL; and ROGER PATTERSON, an individual dba ROY'S DRIVE-IN are the
26 landlords/lessors, tenants/lessees and the owners and operators of the subject ROY'S DRIVE-
27 IN , a public facility located at/near 1306 N. Main Street, Salinas, California. As such, these
28 defendants are jointly and severally responsible to identify and remove architectural barriers

1 pursuant to Code of Federal Regulations title 28, section 36.201(b), which states in pertinent
2 part:

3 **§ 36.201 General**

4 (b) *Landlord and tenant responsibilities.* Both the landlord
5 who owns the building that houses a place of public
6 accommodation and the tenant who owns or operates the place of
7 public accommodation are public accommodations subject to the
8 requirements of this part. As between the parties, allocation of
9 responsibility for complying with the obligations of this part may
10 be determined by lease or other contract.

11 28 CFR §36.201(b)

12 10. Plaintiffs do not know the true names of defendants ESTATE OF JAMES F.
13 RUSSELL; and ROGER PATTERSON, an individual dba ROY'S DRIVE-IN, their business
14 capacities, their ownership connection to the property and business, nor their relative
15 responsibilities in causing the access violations herein complained of, and allege a joint
16 venture and common enterprise by all such defendants. Plaintiffs are informed and believe
17 that each of the defendants herein is a public accommodation, and is the agent, ostensible
18 agent, master, servant, employer, employee, representative, franchisor, franchisee, joint
19 venturer, alter ego, partner, and associate, or such similar capacity, of each of the other
20 defendants, and was at all times acting and performing, or failing to act or perform, within the
21 course and scope of his, her or its authority as agent, ostensible agent, master, servant,
22 employer, employee, representative, franchiser, franchisee, joint venturer, alter ego, partner,
23 and associate, or such similar capacity, and with the authorization, consent, permission or
24 ratification of each of the other defendants, and is responsible in some manner for the acts and
25 omissions of the other defendants in legally causing the violations and damages complained of
26 herein, and have approved or ratified each of the acts or omissions of each other defendant, as
27 herein described. Plaintiffs will seek leave to amend when the true names, capacities,
28 connections, and responsibilities of defendants ESTATE OF JAMES F. RUSSELL; and
ROGER PATTERSON, an individual dba ROY'S DRIVE-IN are ascertained.

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1 11. Plaintiffs are informed and believe that all named defendants conspired to
2 commit the acts described herein, or alternatively, aided and abetted one another in the
3 performance of the wrongful acts hereinafter alleged.

4 **PRELIMINARY FACTUAL ALLEGATIONS:**

5 12. Defendants ESTATE OF JAMES F. RUSSELL; and ROGER PATTERSON,
6 an individual dba ROY'S DRIVE-IN are the private persons and/or entities that are public
7 accommodations that own, lease (or lease to), or operate ROY'S DRIVE-IN, located at/near
8 1306 N. Main Street, Salinas, California. ROY'S DRIVE-IN, its signage, entrance, men's
9 restroom, women's restroom and its other facilities are each a "place of public accommodation
10 or facility" subject to the requirements of the Americans with Disabilities Act and California
11 Health & Safety Code §19955, *et seq.* On information and belief, each such facility has, since
12 July 1, 1970, undergone "alterations, structural repairs and additions," each of which has
13 subjected the drive-in, and each of its facilities, its signage, entrance, men's restroom and
14 women's restroom to handicapped access requirements per the Americans with Disabilities Act
15 Accessibility Guidelines for Buildings & Facilities (ADAAG), Civil Code §54.1, and §19959,
16 Health & Safety Code.

17 13. Plaintiff JAREK MOLSKI is a person with a disability. Plaintiff JAREK
18 MOLSKI is a "person with physical disabilities," as defined by all applicable California and
19 United States laws. Plaintiff JAREK MOLSKI is a paraplegic. Plaintiff JAREK MOLSKI
20 requires the use of a wheelchair for mobility and to travel in public.

21 14. Plaintiff DISABILITY RIGHTS ENFORCEMENT, EDUCATION SERVICES:
22 HELPING YOU HELP OTHERS ("DREES") is a nonprofit (501(c)(3)) organization, the
23 purposes of which are promoting, providing and advocating disability rights, education,
24 independent living, enforcement and services which help provide assistance to persons with
25 disabilities and persons and entities who in turn will help others who have disabilities.

26 15. That members of DREES, like plaintiff JAREK MOLSKI, will or have been
27 guests and invitees at the subject ESTATE OF JAMES F. RUSSELL; and ROGER
28 PATTERSON, and that the interests of plaintiff DREES in removing architectural barriers at

1 the subject drive-in advance the purposes of DREES to assure that all public accommodations,
2 including the subject drive -in, are accessible to independent use by mobility-impaired persons.
3 The relief sought by plaintiff DREES as alleged herein is purely statutory in nature.

4 16. At all times stated herein, plaintiff JAREK MOLSKI was a member of DREES.

5 17. At all times stated herein, Jarek “the sheriff” Molski acted as a private attorney
6 general by and through his attorneys to enforce the Code of Federal Regulations to ensure
7 ROY’S DRIVE-IN is accessible not only for himself but other persons with disabilities.

8 18. At all times referred to herein and continuing to the present time, defendants,
9 and each of them, advertised, publicized and held out the ROY’S DRIVE-IN as being
10 handicapped accessible and handicapped usable.

11 19. On or about May 23, 2003, plaintiff JAREK MOLSKI was an invitee and guest
12 at the subject ROY’S DRIVE-IN with his significant other Brygida Molski for purposes of
13 purchasing a meal.

14 20. On or about May 23, 2003, plaintiff JAREK MOLSKI entered the parking lot
15 of the subject establishment and found that there was no van accessible parking, no regular
16 accessible parking and no signs designating parking for the disabled.

17 21. At said time and place, plaintiff took up two parking spaces to allow him to exit
18 and re-enter his vehicle without being blocked by another vehicle.

19 22. At said time and place, JAREK MOLSKI found that he could not access the
20 service window because of a six inch high sidewalk in front of the building. Plaintiff JAREK
21 MOLSKI had Brygida Molski order his meal for him.

22 23. At said time and place, plaintiff JAREK MOLSKI needed to use a restroom. It
23 did not matter whether it was the men’s or the women’s restroom as long as it was accessible.

24 24. At said time and place, plaintiff attempted to use the men’s restroom and
25 struggled to get up and onto a six inch high sidewalk.

26 25. At said time and place, plaintiff JAREK MOLSKI became caught in the
27 restroom door as it only had 28 inches of clear space. Once inside plaintiff JAREK MOLSKI
28 attempted to use the toilet without grab bars and experienced trauma to his shoulders.

1 26. At said time and place, plaintiff JAREK MOLSKI wheeled off the sidewalk,
2 further aggravating his shoulders.

3 27. Therefore, at said time and place, plaintiff JAREK MOLSKI, a person with a
4 disability, encountered the following inaccessible elements of the subject drive-in, which
5 constituted architectural barriers and a denial of the proper and legally-required access to a
6 public accommodation to persons with physical disabilities including, but not limited to:

- 7 a. lack of directional signage to show accessible routes of travel i.e.
8 entrances;
- 9 b. lack of the requisite type and number of disabled parking stall(s);
- 10 c. lack of the requisite number of regular disabled parking stall(s);
- 11 d. lack of disabled van accessible parking stall(s);
- 12 e. lack of handicapped accessible parking signage;
- 13 f. lack of tow-a-way signage;
- 14 g. lack of a curb cut to the sidewalk leading to the service center;
- 15 h. lack of an accessible curb cut leading to the restrooms;
- 16 i. lack of a handicapped-accessible women's public restroom;
- 17 j. lack of a handicapped-accessible men's public restroom, and;
- 18 k. on personal knowledge, information and belief, other public facilities
19 and elements too numerous to list were improperly inaccessible for use
20 by persons with physical disabilities.

21 28. At all times stated herein, the existence of architectural barriers at defendants'
22 place of public accommodation evidenced "actual notice" of defendants' intent not to comply
23 with the Americans with Disabilities Act of 1990 either then, now or in the future.

24 29. As a legal result of defendants ESTATE OF JAMES F. RUSSELL and ROGER
25 PATTERSON's failure to act as a reasonable and prudent public accommodation in
26 identifying, removing or creating architectural barriers, policies, practices and procedures that
27 denied access to plaintiffs and other persons with disabilities, plaintiffs suffered the damages as
28 alleged herein.

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1 30. At all times stated herein, defendants, and each of them, were “negligent per
2 se” in not removing architectural barriers determined by the Department of Justice to be
3 considered a safety concern/safety hazard where it was readily achievable for said public
4 accommodation to remove barriers. The barriers and those requirements for barrier removal
5 are found in 28 CFR 36, and the building code to be followed is in appendix “A”, referred to
6 as “ADAAG”. Therefore as a legal result of defendants breach of duty to remove those
7 barriers encountered by plaintiff, plaintiff suffered bodily injury.

8 31. As a further legal result of the actions and failure to act of defendants, and as a
9 legal result of the failure to provide proper handicapped-accessible public facilities as set forth
10 herein, plaintiffs were denied their civil rights to full and equal access to public facilities.
11 Plaintiff JAREK MOLSKI suffered a loss of his civil rights and his rights as a person with
12 physical disabilities to full and equal access to public facilities, and further suffered bodily
13 injury (including, but not limited to, fatigue, stress, strain and pain in wheeling and attempting
14 to and/or transferring to, through, up, over and around architectural barriers. Specifically, as a
15 result of defendants’ negligence in designing, constructing and maintaining the sidewalks
16 without curb cuts, a restroom missing grab bars and a toilet seat at 17 to 19 inches, these
17 elements or lack thereof contributed to the trauma suffered by plaintiff JAREK MOLSKI.),
18 physical discomfort, emotional distress, mental distress, mental suffering, mental anguish,
19 which includes, but is not limited to, shame, humiliation, embarrassment, anger, chagrin,
20 disappointment and worry, expectedly and naturally associated with a person with physical
21 disabilities being denied access, all to his damages as prayed hereinafter in an amount within
22 the jurisdiction of this court.

23 32. Defendants’, and each of their, failure to remove the architectural barriers
24 complained of herein created, at the time of plaintiff JAREK MOLSKI’s first visit to said
25 public accommodation, and continues to create continuous and repeated exposure to
26 substantially the same general harmful conditions which caused plaintiff JAREK MOLSKI
27 fatigue, stress, strain and pain in futilely attempting to overcome the architectural barriers as
28 stated herein.

1 33. Plaintiff JAREK MOLSKI is “physically handicapped,” “physically disabled,”
2 or a “person with physical disabilities” who was denied his rights to equal access to a public
3 facility by defendants ESTATE OF JAMES F. RUSSELL; and ROGER PATTERSON, an
4 individual dba ROY’S DRIVE-IN, because defendants ESTATE OF JAMES F. RUSSELL;
5 and ROGER PATTERSON, an individual dba ROY’S DRIVE-IN maintained a drive-in
6 restaurant without access for persons with physical disabilities to its facilities, including but
7 not limited to the signage, entrance, men’s restroom, women’s restroom and other public areas
8 as stated herein, and continue to the date of filing this complaint to deny equal access to
9 plaintiffs and other persons with physical disabilities in these and other ways.

10 34. Plaintiff DREES, whose members and the disability community that DREES
11 serves are “physically handicapped,” “physically disabled,” or “persons with physical
12 disabilities” and were, are and will be denied their rights to equal access to a public facility by
13 defendants ESTATE OF JAMES F. RUSSELL; and ROGER PATTERSON, an individual dba
14 ROY’S DRIVE-IN because defendants ESTATE OF JAMES F. RUSSELL; and ROGER
15 PATTERSON, an individual dba ROY’S DRIVE-IN maintained a drive-in restaurant without
16 access for persons with physical disabilities to its facilities, including but not limited to the
17 signage, entrance, men’s restroom, women’s restroom and other public areas as stated herein
18 and continue to the date of filing this complaint to deny equal access to plaintiff and other
19 persons with physical disabilities in these and other ways.

20 35. On information and belief, construction alterations carried out by defendants
21 have also triggered access requirements under both California law and the Americans with
22 Disabilities Act of 1990.

23 36. Plaintiffs, as described hereinbelow, seek injunctive relief to require ROY’S
24 DRIVE-IN to be made accessible to meet the requirements of both California law and the
25 Americans with Disabilities Act of 1990, whichever is more restrictive, so long as defendants
26 operate the drive-in restaurant as a public facility. Plaintiffs seek damages for violation of
27 their civil rights, from May 23, 2003 until such date as defendants bring the drive-in restaurant
28 into compliance with the requirements of California and federal law. To encourage defendants

1 to bring ROY'S DRIVE-IN into compliance with the law, plaintiffs also seek daily damages of
2 not less than \$4,000/day, pursuant to §§52(a) and 54.3, California Civil Code, for each day
3 after his visit until such time as ROY'S DRIVE-IN is made fully accessible to plaintiffs and to
4 other persons with physical disabilities.

5 37. On information and belief, defendants have been negligent in their affirmative
6 duty to identify the architectural barriers complained of herein and negligent in the removal of
7 some or all of said barriers.

8 38. Because of defendants' violations, plaintiffs and other persons with physical
9 disabilities are unable to use public facilities such as those owned and operated by defendants
10 on a "full and equal" basis unless such facility is in compliance with the provisions of the
11 Americans with Disabilities Act of 1990, Civil Code §54.1 and Health & Safety Code §19955,
12 *et seq.* and other accessibility law as plead herein. Plaintiffs seek an order from this court
13 compelling defendants to make ROY'S DRIVE-IN accessible to persons with disabilities.

14 39. On information and belief, defendants have intentionally undertaken to modify
15 and alter existing building(s), and have failed to make them comply with accessibility
16 requirements under the requirements of ADAAG and Title 24. The acts and omission of
17 defendants, and each of them, in failing to provide the required accessible public facilities at
18 the time of plaintiff's visit and injuries, indicate actual and implied malice toward plaintiffs,
19 and despicable conduct carried out by defendants, and each of them, with a willful and
20 conscious disregard for the rights and safety of plaintiffs and other similarly situated persons,
21 and justify exemplary damages pursuant to §3294 of the Civil Code, in amounts sufficient to
22 make a more profound example of defendants, and each of them, to other operators of other
23 drive in restaurants and other public facilities, and to punish defendants and to carry out the
24 purposes of §3294 of the Civil Code.

25 40. Plaintiffs are informed and believe and therefore allege that defendants
26 ESTATE OF JAMES F. RUSSELL; and ROGER PATTERSON, an individual dba ROY'S
27 DRIVE-IN, and each of them, caused the subject building(s) which constitute ROY'S DRIVE-
28 IN to be constructed, altered and maintained in such a manner that persons with physical

1 disabilities were denied full and equal access to ROY'S DRIVE-IN, within and throughout said
2 building(s) of the drive-in and were denied full and equal use of said public facilities. Further,
3 on information and belief, defendants have continued to maintain and operate said drive-in
4 and/or its building(s) in such conditions up to the present time, despite actual and constructive
5 notice to such defendants that the configuration of ROY'S DRIVE-IN and/or its building(s) is
6 in violation of the civil rights of persons with physical disabilities, such as plaintiff JAREK
7 MOLSKI, the membership of plaintiff DREES and the disability community which DREES
8 serves. Such construction, modification, ownership, operation, maintenance and practices of
9 such public facilities are in violation of law as stated in Part 5.5, Health & Safety Code
10 §19955-19959, *et seq.* and elsewhere in the laws of California.

11 41. On information and belief, the subject public facilities and building(s) of ROY'S
12 DRIVE-IN denied full and equal access to plaintiffs and other persons with physical
13 disabilities in other respects due to noncompliance with requirements of Title 24 of California
14 Building Standards Code and Health & Safety Code §19955, *et seq.*

15 42. On personal knowledge, information and belief, the basis of defendants' actual
16 and constructive notice that the physical configuration of the facilities including, but not
17 limited to, architectural barriers constituting ROY'S DRIVE-IN and/or building(s) was in
18 violation of the civil rights of persons with physical disabilities, such as plaintiffs, includes,
19 but is not limited to, communications with invitees and guests, owners of other drive in's,
20 restaurants, and businesses, notices they obtained from governmental agencies upon
21 modification, improvement, or substantial repair of the subject premises and other properties
22 owned by these defendants, newspaper articles and trade publications regarding the Americans
23 with Disabilities Act of 1990 and other access laws, public service announcements by former
24 U.S. Attorney General Janet Reno between 1993 and 2000, and other similar information.
25 Defendants' failure, under state and federal law, to make ROY'S DRIVE-IN
26 accessible is further evidence of defendants' conscious disregard for the rights of plaintiff and
27 other similarly situated persons with disabilities. The scope and means of the knowledge of
28 each defendant is within each defendant's exclusive control and cannot be ascertained except

1 through discovery. Despite being informed of such effect on plaintiff and other persons with
2 physical disabilities due to the lack of accessible facilities, defendants, and each of them,
3 knowingly and willfully refused to take any steps to rectify the situation and to provide full
4 and equal access for plaintiffs and other persons with physical disabilities to the Said
5 defendants, and each of them, have continued such practices, in conscious disregard for the
6 rights of plaintiffs and other persons with physical disabilities, up to the date of filing of this
7 complaint, and continuing thereon. Defendants had further actual knowledge of ROY's
8 DRIVE-IN architectural barriers referred to herein by virtue of the demand letter addressed to
9 the defendants and served concurrently with the summons and complaint. Said conduct, with
10 knowledge of the effect it was and is having on plaintiffs and other persons with physical
11 disabilities, constitutes despicable conduct in conscious disregard of the rights and safety of
12 plaintiffs and of other similarly situated persons, justifying the imposition of punitive and
13 exemplary damages per Civil Code §3294.

14 43. Punitive Damages -- Defendants, and each of them, at times prior to and
15 including May 23, 2003 and continuing to the present time, knew that persons with physical
16 disabilities were denied their rights of equal access to all portions of this public facility.
17 Despite such knowledge, defendants, and each of them, failed and refused to take steps to
18 comply with the applicable access statutes; and despite knowledge of the resulting problems
19 and denial of civil rights thereby suffered by plaintiffs and other similarly situated persons
20 with disabilities, including the specific notices referred to in paragraph 42 of this complaint.
21 Defendants, and each of them, have failed and refused to take action to grant full and equal
22 access to persons with physical disabilities in the respects complained of hereinabove.
23 Defendants, and each of them, have carried out a course of conduct of refusing to respond to,
24 or correct complaints about, denial of handicap access and have refused to comply with their
25 legal obligations to make the drive in accessible pursuant to the Americans with Disabilities
26 Act of 1990, Americans with Disabilities Act Accessibility Guidelines (ADAAG) and Title 24.
27 Such actions and continuing course of conduct by defendants, and each of them, evidence
28 despicable conduct in conscious disregard for the rights or safety of plaintiffs and of other

1 similarly situated persons, justifying an award of exemplary and punitive damages pursuant to
2 §3294, Civil Code.

3 44. Defendants', and each of their, actions have also been oppressive to persons
4 with physical disabilities and of other members of the public, and have evidenced actual or
5 implied malicious intent toward those members of the public, such as plaintiffs and other
6 persons with physical disabilities who have been denied the proper access they are entitled to
7 by law. Further, defendants', and each of their, refusals on a day-to-day basis to remove the
8 barriers complained of herein evidence despicable conduct in conscious disregard for the rights
9 of plaintiffs and other members of the public with physical disabilities.

10 45. Plaintiffs pray for an award of punitive damages against defendants, and each of
11 them, pursuant to Civil Code §3294 in an amount sufficient to make a more profound example
12 of defendants and discourage owners and operators of other restaurants, hotels and motels and
13 other public facilities, from willful disregard of the rights of persons with physical disabilities.
14 Plaintiffs do not know the financial worth of defendants, or the amount of punitive damages
15 sufficient to accomplish the public purposes of §3294 of the Civil Code and seek leave to
16 amend this complaint when such facts are known.

17 46. Plaintiff JAREK MOLSKI and plaintiff DREES, on behalf of its membership
18 and the disability community which it serves, consisting of persons with disabilities, would,
19 could and will return to the subject public accommodation when it is made accessible to
20 persons with disabilities.

21 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC**
22 **ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
23 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, et seq.)**

24 (On behalf of Plaintiffs JAREK MOLSKI and DISABILITY RIGHTS
25 ENFORCEMENT, EDUCATION SERVICES: HELPING YOU HELP OTHERS, a
26 California public benefit corporation and Against Defendants ESTATE OF JAMES F.
27 RUSSELL; and ROGER PATTERSON, an individual dba ROY'S DRIVE-IN,
28 inclusive)
(42 U.S.C. §12101, et seq.)

26 47. Plaintiffs replead and incorporate by reference, as if fully set forth again herein,
27 the allegations contained in paragraphs 1 through 46 of this complaint.

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1 48. Pursuant to law, in 1990, the United States Congress made findings per
2 42 U.S.C. §12101 regarding persons with physical disabilities, finding that laws were needed
3 to more fully protect:

4 some 43 million Americans with one or more physical or mental
5 disabilities; [that] historically society has tended to isolate and
6 segregate individuals with disabilities; [that] such forms of
7 discrimination against individuals with disabilities continue to be
8 a serious and pervasive social problem; [that] the nation's proper
9 goals regarding individuals with disabilities are to assure equality
10 of opportunity, full participation, independent living and
11 economic self-sufficiency for such individuals; [and that] the
12 continuing existence of unfair and unnecessary discrimination and
13 prejudice denies people with disabilities the opportunity to
14 compete on an equal basis and to pursue those opportunities for
15 which our free society is justifiably famous.

16 49. Congress stated as its purpose in passing the Americans with Disabilities Act of
17 1990 (42 U.S.C. §12102):

18 It is the purpose of this act (1) to provide a clear and
19 comprehensive national mandate for the elimination of
20 discrimination against individuals with disabilities; (2) to provide
21 clear, strong, consistent, enforceable standards addressing
22 discrimination against individuals with disabilities; (3) to ensure
23 that the Federal government plays a central role in enforcing the
24 standards established in this act on behalf of individuals with
25 disabilities; and (4) to invoke the sweep of Congressional
26 authority, including the power to enforce the 14th Amendment
27 and to regulate commerce, in order to address the major areas of
28 discrimination faced day to day by people with disabilities.

50. As part of the Americans with Disabilities Act of 1990, Public Law 101-336
(hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services
Operated by Private Entities" (Section 301 42 U.S.C. §12181, *et seq.*). Among the public
accommodations identified for purposes of this title was:

(7) PUBLIC ACCOMMODATION - The following private
entities are considered public accommodations for purposes of
this title, if the operations of such entities affect commerce -

...

(B) a restaurant, bar or other establishment serving food or drink;
42 U.S.C. §12181(7)(B)

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1 51. Pursuant to §302, 42 U.S.C. §12182, “No individual shall be discriminated
2 against on the basis of disability in the full and equal enjoyment of the goods, services,
3 facilities, privileges, advantages, or accommodations of any place of public accommodation by
4 any person who owns, leases, or leases to, or operates a place of public accommodation.”

5 52. The specific prohibitions against discrimination set forth in §302(b)(2)(a),
6 42 U.S.C. §12182(b)(2)(a) are:

7 (I) the imposition or application of eligibility criteria
8 that screen out or tend to screen out an individual with a
9 disability or any class of individuals with disabilities from fully
10 and equally enjoying any goods, services, facilities, privileges,
11 advantages, or accommodations, unless such criteria can be
12 shown to be necessary for the provision of the goods, services,
13 facilities, privileges, advantages, or accommodations being
14 offered;

15 (ii) a failure to make reasonable modifications in
16 policies, practices, or procedures, when such modifications are
17 necessary to afford such goods, services, facilities, privileges,
18 advantages or accommodations to individuals with disabilities,
19 unless the entity can demonstrate that making such modifications
20 would fundamentally alter the nature of such goods, services,
21 facilities, privileges, advantages, or accommodations;

22 (iii) a failure to take such steps as may be necessary to
23 ensure that no individual with a disability is excluded, denied
24 services, segregated or otherwise treated differently than other
25 individuals because of the absence of auxiliary aids and services,
26 unless the entity can demonstrate that taking such steps would
27 fundamentally alter the nature of the good, service, facility,
28 privilege, advantage, or accommodation being offered or would
result in an undue burden;

(iv) a failure to remove architectural barriers, and
communication barriers that are structural in nature, in existing
facilities . . . where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal
of a barrier under clause (iv) is not readily achievable, a failure
to make such goods, services, facilities, privileges, advantages or
accommodations available through alternative methods if such
methods are readily achievable.

25 The acts of defendants set forth herein were a violation of plaintiffs’ rights under the ADA,
26 Public Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.* -
27 Effective January 31, 1993, the standards of the ADA were also incorporated into California
28

1 Civil Code §51, making available the damage remedies incorporated into Civil Code §51 and
2 52(a) and 54.3.

3 53. The removal of the barriers complained of by plaintiffs as hereinabove alleged
4 was at all times after January 26, 1992 “readily achievable” as to the subject building(s) of
5 ROY’S DRIVE-IN pursuant to 42 U.S.C. §12182 (b)(2)(A)(I)-(iv). On information and
6 belief, if the removal of all the barriers complained of herein together was not “readily
7 achievable,” the removal of each individual barrier complained of herein was “readily
8 achievable.” On information and belief, defendants’ failure to remove said barriers was
9 likewise due to discriminatory practices, procedures and eligibility criteria, as defined by 42
10 U.S.C. §12182 (b)(2)(A)(i)and (ii).

11 54. Per 42 U.S.C. §12181 (9), the term “readily achievable” means “easily
12 accomplishable and able to be carried out without much difficulty or expense.” The statute
13 defines relative “expense” in part in relation to the total financial resources of the entities
14 involved. Plaintiffs allege that properly repairing, modifying, or altering each of the items
15 that plaintiffs complain of herein were and are “readily achievable” by the defendants under
16 the standards set forth under §301(9) of the Americans with Disabilities Act. Further, if it
17 was not “readily achievable” for defendants to remove each of such barriers, defendants have
18 failed to make the required services available through alternative methods which were readily
19 achievable.

20 55. On information and belief, construction work on, and modifications of ROY’S
21 DRIVE-IN occurred after the compliance date for the Americans with Disabilities Act,
22 January 26, 1992, independently triggering access requirements under Title III of the ADA.

23 56. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
24 *seq.*, plaintiffs are entitled to the remedies and procedures set forth in §204(a) of the Civil
25 Rights Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiffs are being subjected to discrimination
26 on the basis of disability in violation of this title or have reasonable grounds for believing that
27 plaintiffs are about to be subjected to discrimination in violation of §302. Plaintiffs cannot
28

1 return to or make use of the public facilities complained of herein so long as the premises and
2 defendants' policies bar full and equal use by persons with physical disabilities.

3 57. Per 42 U.S.C. 12188 (a)(1), "Nothing in this section shall require a person with
4 a disability to engage in a futile gesture if such person has actual notice that a person or
5 organization covered by this title does not intend to comply with its provisions." Pursuant to
6 this last section, plaintiff JAREK MOLSKI has not returned to defendants' premises since on
7 or about May 23, 2003 but on information and belief, alleges that defendants have continued
8 to violate the law and deny the rights of plaintiffs and of other persons with physical
9 disabilities to access this public accommodation. Pursuant to 42 USC §12188(a)(2), "In cases
10 of violations of §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities
11 to make such facilities readily accessible to and usable by individuals with disabilities to the
12 extent required by this title."

13 58. Plaintiffs seek relief pursuant to remedies set forth in §204(a) of the Civil
14 Rights Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to
15 implement the Americans with Disabilities Act of 1990, including but not limited to an order
16 granting injunctive relief and attorneys' fees. Plaintiffs will seek attorneys' fees conditioned
17 upon being deemed to be the prevailing party.

18 59. Plaintiffs seek damages pursuant to California Civil Code §§51, 51.5 and 52(a),
19 54, 54.1 and 54.3, which provide, within the statutory scheme, that a violation of the ADA is
20 a violation of California's Unruh Civil Rights Act.

21 Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

22 **II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS**
23 **IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.**
24 (On Behalf of Plaintiffs JAREK MOLSKI and DISABILITY RIGHTS,
25 ENFORCEMENT, EDUCATION SERVICES: HELPING YOU HELP OTHERS, a
26 California public benefit corporation, and Against Defendants ESTATE OF JAMES F.
RUSSELL; and ROGER PATTERSON, an individual dba ROY'S DRIVE-IN,
inclusive)
(California Civil Code §§54, 54.1, 54.3, *et seq.*)

27 60. Plaintiffs replead and incorporate by reference as if fully set forth again herein,
28 the allegations contained in paragraphs 1 through 59 of this complaint.

1 61. At all times relevant to this action, California Civil Code §54 has provided that
2 persons with physical disabilities are not to be discriminated against because of physical
3 handicap or disability. This section provides that:

4 (a) Individuals with disabilities . . . have the same rights
5 as the general public to full and free use of the streets, highways,
6 sidewalks, walkways, public buildings, medical facilities,
7 including hospitals, clinics, and physicians' offices, and other
8 public places.

9 62. California Civil Code §54.1 provides that persons with disabilities shall not be
10 denied full and equal access to places of public accommodation or facilities:

11 (a)(1) Individuals with disabilities shall be entitled to full
12 and equal access, as other members of the general public, to
13 accommodations, advantages, facilities, medical facilities,
14 including hospitals, clinics, and physicians' offices, and
15 privileges of all common carriers, airplanes, motor vehicles,
16 railroad trains, motorbuses, streetcars, boats, or any other public
17 conveyances or modes of transportation (whether private, public,
18 franchised, licensed, contracted, or otherwise provided),
19 telephone facilities, adoption agencies, private schools, hotels,
20 lodging places, places of public accommodation, amusement or
21 resort, and other places to which the general public is invited,
22 subject only to the conditions and limitations established by law,
23 or state or federal regulation, and applicable alike to all persons.

24 Civil Code §54.1(a)(1)

25 63. California Civil Code §54.1 further provides that a violation of the Americans
26 with Disabilities Act of 1990 constitutes a violation of section 54.1:

27 (d) A violation of the right of an individual under the
28 Americans with Disabilities Act of 1990 (Public Law 101-336)
also constitutes a violation of this section, and nothing in this
section shall be construed to limit the access of any person in
violation of that act.

 Civil Code §54.1(d)

 64. Plaintiff JAREK MOLSKI and the membership of plaintiff DREES are persons
within the meaning of Civil Code §54.1 whose rights have been infringed upon and violated by
the defendants, and each of them, as prescribed by §§54 and 54.1. A separate act in violation
of §§54 and 54.1 has been committed EACH DAY that defendants act or fail to act and/or
knowingly and willfully fail and refuse to remove **each** architectural barrier or policy and
procedure barrier presently existing at the subject public accommodation which denies full and

1 equal access for persons with physical disabilities to said building(s), elements and facilities of
2 ROY'S DRIVE IN. Plaintiffs have been denied full and equal access on an ongoing basis since
3 the date of plaintiff JAREK MOLSKI's first visit. As a legal result, plaintiffs are entitled to
4 seek damages pursuant to California Civil Code §54.3(a), which provides:

5 Any person or persons, firm or corporation, who denies or
6 interferes with admittance to or enjoyment of the public facilities
7 as specified in Sections 54 and 54.1 or otherwise interferes with
8 the rights of an individual with a disability under Sections 54,
9 54.1 and 54.2 is liable for each offense for the actual damages
10 and any amount as may be determined by a jury, or the court
11 sitting without a jury, up to a maximum of three times the
12 amount of actual damages but in no case less than . . .one
13 thousand dollars (\$1,000) and . . . attorney's fees as may be
14 determined by the court in addition thereto, suffered by any
15 person denied any of the rights provided in Sections 54, 54.1 and
16 54.2.

17 Civil Code §54.3(a)

18 65. The public facilities above described constitute "public facilities and public
19 accommodations" within the meaning of Health & Safety Code §19955 and were facilities to
20 which members of the public are invited. The aforementioned acts and omissions of
21 defendants, and each of them, constitute a denial of equal access to use and enjoyment of these
22 facilities by persons with disabilities including plaintiffs. Said acts and omissions are also in
23 violation of provisions of Title 24 of the California Building Standards Code.

24 66. On or about May 23, 2003 plaintiff JAREK MOLSKI suffered violations of
25 §§54 and 54.1 of the Civil Code in that plaintiff JAREK MOLSKI was denied access to
26 signage, entrance, men's restroom, women's restroom and other public facilities as stated
27 herein at ROY'S DRIVE IN and on the basis that plaintiff JAREK MOLSKI was a person with
28 physical disabilities.

67. As a result of the denial of equal access to defendants' facilities due to the acts
and omissions of defendants, and each of them, in owning, operating and maintaining these
subject public facilities, plaintiffs suffered violations of plaintiffs' civil rights, including but
not limited to rights under §§54, 54.1 and 54.3, Civil Code, and plaintiff JAREK MOLSKI
suffered physical discomfort, bodily injury (including, but not limited to, fatigue, stress, strain

1 and pain in wheeling and attempting to and/or transferring to, through, up, over and around
2 architectural barriers. Specifically, as a result of defendants' negligence in designing,
3 constructing and maintaining the sidewalks without curb cuts, a restroom missing grab bars
4 and a toilet seat at 17 to 19 inches, these elements or lack thereof contributed to the trauma
5 suffered by plaintiff JAREK MOLSKI.), emotional distress, mental distress, mental suffering,
6 mental anguish, which includes shame, humiliation, embarrassment, frustration, anger,
7 chagrin, disappointment and worry, all of which are expectedly and naturally associated with a
8 denial of access to a person with physical disabilities, all to plaintiff's damages as hereinafter
9 stated. Defendants' actions and omissions to act constituted discrimination against plaintiff on
10 the sole basis that plaintiffs are persons or an entity that represents persons with physical
11 disabilities and unable, because of the architectural barriers created and maintained by the
12 defendants in violation of the subject laws, to use the public facilities hereinabove described on
13 a full and equal basis as other persons.

14 68. Plaintiffs have been damaged by defendants', and each of their, wrongful
15 conduct and seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 and 55 for
16 violation of plaintiffs' rights as persons or an entity that represents persons with physical
17 disabilities on or about May 23, 2003, and on a continuing basis since then, including
18 statutory damages, a trebling of all of actual damages, general and special damages available
19 pursuant to §54.3 of the Civil Code according to proof.

20 69. As a result of defendants', and each of their, acts and omissions in this regard,
21 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce
22 plaintiffs' rights and enforce the provisions of the law protecting access for persons with
23 physical disabilities and prohibiting discrimination against persons with physical disabilities.
24 Pursuant to the provisions of §54.3 of the Civil Code, plaintiffs therefore will seek recovery in
25 this lawsuit for all reasonable attorneys' fees and costs incurred if deemed the prevailing party.
26 Additionally, plaintiffs' lawsuit is intended not only to obtain compensation for damages to
27 plaintiffs, but also to compel the defendants to make their facilities accessible to all members
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1 of the public with disabilities, justifying public interest attorneys' fees, if deemed the
2 prevailing party, pursuant to the provisions of §1021.5 of the Code of Civil Procedure.

3 Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

4 **III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY**
5 **FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, ET.**
6 **SEQ.**

7 (On Behalf of Plaintiffs JAREK MOLSKI and DISABILITY RIGHTS,
8 ENFORCEMENT, EDUCATION SERVICES: HELPING YOU HELP OTHERS, a
9 California public benefit corporation and Against Defendants ESTATE OF JAMES F.
10 RUSSELL; and ROGER PATTERSON, an individual dba ROY'S DRIVE-IN,
11 inclusive)
12 (Health & Safety Code §19955, *et seq.*)

13 70. Plaintiffs replead and incorporate by reference, as if fully set forth again herein,
14 the allegations contained in paragraphs 1 through 69 of this complaint.

15 71. Health & Safety Code §19955 provides in pertinent part:

16 The purpose of this part is to insure that public accommodations
17 or facilities constructed in this state with private funds adhere to
18 the provisions of Chapter 7 (commencing with Sec. 4450) of
19 Division 5 of Title 1 of the Government Code. For the purposes
20 of this part "public accommodation or facilities" means a
21 building, structure, facility, complex, or improved area which is
22 used by the general public and shall include auditoriums,
23 hospitals, theaters, restaurants, hotels, motels, stadiums, and
24 convention centers. When sanitary facilities are made available
25 for the public, clients or employees in such accommodations or
26 facilities, they shall be made available for the handicapped.

27 72. Health & Safety Code §19956, which appears in the same chapter as §19955,
28 provides in pertinent part, "accommodations constructed in this state shall conform to the
provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the
Government Code" Health & Safety Code §19956 was operative July 1, 1970, and is
applicable to all public accommodations constructed or altered after that date. On information
and belief, portions of the drive in and/or of the building(s) were constructed and/or altered
after July 1, 1970, and substantial portions of ROY'S DRIVE-IN and/or the building(s) had
alterations, structural repairs, and/or additions made to such public accommodations after July
1, 1970, thereby requiring said drive in and/or building to be subject to the requirements of
Part 5.5, §19955, *et seq.*, of the Health & Safety Code upon such alteration, structural repairs
or additions per Health & Safety Code §19959.

1 73. Pursuant to the authority delegated by Government Code §4450, *et seq*, the
2 State Architect promulgated regulations for the enforcement of these provisions. Effective
3 July 1, 1982, Title 24 of the California Building Standards Code adopted the California State
4 Architect's Regulations and these regulations must be complied with as to any alterations
5 and/or modifications of ROY'S DRIVE-IN and/or the building(s) occurring after that date.
6 Construction changes occurring prior to this date but after July 1, 1970 triggered access
7 requirements pursuant to the "ASA" requirements, the American Standards Association
8 Specifications, A117.1-1961. On information and belief, at the time of the construction and
9 modification of said building, all buildings and facilities covered were required to conform to
10 each of the standards and specifications described in the American Standards Association
11 Specifications and/or those contained in Title 24 of the California Building Standards Code.

12 74. Restaurants such as ROY'S DRIVE-IN are "public accommodations or
13 facilities" within the meaning of Health & Safety Code §19955, *et seq*.

14 75. As a legal result of denial of access to plaintiffs as hereinabove described,
15 plaintiff JAREK MOLSKI suffered bodily and emotional injuries expectedly, normally and
16 naturally associated with a denial of access to signage, entrance, men's restroom, women's
17 restroom and other public areas as stated herein.

18 76. As a result of the actions and failure to act of defendants, and as a result of the
19 failure to provide proper and legally handicapped-accessible public facilities, plaintiffs were
20 denied plaintiffs' rights to full and equal access to public facilities, suffered a loss of plaintiffs'
21 civil rights and plaintiffs' rights as persons with physical disabilities to full and equal access to
22 public facilities, and plaintiff JAREK MOLSKI further suffered bodily injury (including, but
23 not limited to, fatigue, stress, strain and pain in wheeling and attempting to and/or transferring
24 to, through and around architectural barriers. Specifically, as a result of defendants'
25 negligence in designing, constructing and maintaining the sidewalks without curb cuts, a
26 restroom missing grab bars and a toilet seat at 17 to 19 inches, these elements or lack thereof
27 contributed to the trauma suffered by plaintiff JAREK MOLSKI.), emotional distress, mental
28 distress, mental suffering, mental anguish, which includes shame, humiliation, embarrassment,

1 anger, chagrin, disappointment and worry expectedly and naturally associated with a person
 2 with physical disabilities being denied access, all to plaintiffs' damages as prayed hereinafter
 3 in an amount within the jurisdiction of this court.

4 77. Attorneys' Fees -- As a result of defendants' acts and omissions in this regard,
 5 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce
 6 plaintiffs' civil rights and enforce provisions of the law protecting access for the persons with
 7 physical disabilities and prohibiting discrimination against the persons with physical
 8 disabilities, and to take such action both in plaintiffs' own interests and in order to enforce an
 9 important right affecting the public interest. Plaintiffs, therefore, seek in this lawsuit the
 10 recovery of all reasonable attorneys' fees incurred, pursuant to the provisions of the Code of
 11 Civil Procedure §1021.5. Plaintiffs additionally seek attorneys' fees pursuant to Health &
 12 Safety Code §19953 and Civil Code §§54.3 and 55 and/or in the alternative, plaintiffs will
 13 seek attorneys' fees, costs and litigation expenses pursuant to §204(a) of the Civil Rights Act
 14 of 1964 (42 U.S.C. 200(a)-3(a)). Plaintiffs will seek attorneys' fees conditioned upon being
 15 deemed to be the prevailing party.

16 78. Plaintiffs seek injunctive relief for an order compelling defendants, and each of
 17 them, to make the subject place of public accommodation readily accessible to and usable by
 18 persons with disabilities.

19 79. Plaintiffs seek damages pursuant to California Civil Code §§52(a) and 54.3.

20 Wherefore, plaintiffs pray for damages and relief as hereinafter stated.

21 **IV. FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND**
 22 **EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES**
 23 **AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET**
 24 **SEQ. (THE UNRUH CIVIL RIGHTS ACT)**
 25 (On Behalf of Plaintiffs JAREK MOLSKI and DISABILITY RIGHTS,
 26 ENFORCEMENT, EDUCATION SERVICES: HELPING YOU HELP OTHERS, a
 27 California public benefit corporation, and Against Defendants ESTATE OF JAMES F.
 28 RUSSELL; and ROGER PATTERSON, an individual dba ROY'S DRIVE-IN,
 inclusive)
 (Civil Code §51, 51.5)

80. Plaintiffs replead and incorporate by reference, as if fully set forth again herein,
 the allegations contained in paragraphs 1 through 79 of this complaint.

1 81. Defendants’ actions and omissions and failure to act as a reasonable and prudent
2 public accommodation in identifying, removing and/or creating architectural barriers, policies,
3 practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act. The
4 Unruh Act provides:

5 This section shall be known, and may be cited, as the
6 Unruh Civil Rights Act.

7 All persons within the jurisdiction of this state are free
8 and equal, and no matter what their sex, race, color, religion,
9 ancestry, national origin, or **disability** are entitled to the full and
10 equal accommodations, advantages, facilities, privileges, or
11 services in all business establishments of every kind whatsoever.

12 This section shall not be construed to confer any right or
13 privilege on a person that is conditioned or limited by law or that
14 is applicable alike to persons of every sex, color, race, religion,
15 ancestry, national origin, or **disability**.

16 Nothing in this section shall be construed to require any
17 construction, alteration, repair, structural or otherwise, or
18 modification of any sort whatsoever, beyond that construction,
19 alteration, repair, or modification that is otherwise required by
20 other provisions of law, to any new or existing establishment,
21 facility, building, improvement, or any other structure . . . nor
22 shall anything in this section be construed to augment, restrict, or
23 alter in any way the authority of the State Architect to require
24 construction, alteration, repair, or modifications that the State
25 Architect otherwise possesses pursuant to other . . . laws.

26 A violation of the right of any individual under the
27 Americans with Disabilities Act of 1990 (Public Law 101-336)
28 shall also constitute a violation of this section.

As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the
“intent” of the defendants in not complying with barrier removal is not an issue. Hence, the
failure on the parts of defendants, as reasonable and prudent public accommodations, in acting
or failing to act to identify and remove barriers can be construed as a “negligent per se” act of
defendants, and each of them.

82. The acts and omissions of defendants stated herein are discriminatory in nature
and in violation of Civil Code §51.5:

No business establishment of any kind whatsoever shall
discriminate against, boycott or blacklist, refuse to buy from, sell
to, or trade with any person in this state because of the race,
creed, religion, color, national origin, sex, or **disability** of the

1 person or of the person’s partners, members, stockholders,
2 directors, officers, managers, superintendents, agents,
employees, business associates, suppliers, or customers.

3 As used in this section, “person” includes any person,
4 firm association, organization, partnership, business trust,
corporation, limited liability company, or company.

5 Nothing in this section shall be construed to require any
6 construction, alteration, repair, structural or otherwise, or
7 modification of any sort whatsoever, beyond that construction,
8 alteration, repair or modification that is otherwise required by
9 other provisions of law, to any new or existing establishment,
10 facility, building, improvement, or any other structure . . . nor
11 shall anything in this section be construed to augment, restrict or
12 alter in any way the authority of the State Architect to require
13 construction, alteration, repair, or modifications that the State
14 Architect otherwise possesses pursuant to other laws.

15 83. Defendants’ acts and omissions as specified have denied to plaintiffs full and
16 equal accommodations, advantages, facilities, privileges and services in a business
17 establishment, on the basis of physical disability, in violation of Civil Code §§51 and 51.5, the
18 Unruh Civil Rights Act. Further, pursuant to the 1992 amendment to California Civil
19 Code §51, “A violation of the right of any individual under the Americans with Disabilities
20 Act of 1990 (Public Law 101-336) shall also constitute a violation of this section.” Plaintiffs
21 accordingly incorporate the entirety of their above cause of action for violation of the
22 Americans with Disabilities Act at ¶¶46 *et seq.*, as if repled herein.

23 84. As a legal result of the violation of plaintiff JAREK MOLSKI’s civil rights as
24 hereinabove described, plaintiff JAREK MOLSKI has suffered general damages, bodily injury
25 (including, but not limited to, fatigue, stress, strain and pain in wheeling and attempting to
26 and/or transferring to, through and around architectural barriers. Specifically, as a result of
27 defendants’ negligence in designing, constructing and maintaining the sidewalks without curb
28 cuts, a restroom missing grab bars and a toilet seat at 17 to 19 inches, these elements or lack
thereof contributed to the trauma suffered by plaintiff JAREK MOLSKI.), physical injury,
emotional distress (all to plaintiff’s damage according to proof, and incurred reasonable
attorneys’ fees and costs). Plaintiffs JAREK MOLSKI and DREES are entitled to the rights
and remedies of §52(a) of the Civil Code, including trebling of actual damages (defined by

1 §52(h) of the Civil Code to mean “special and general damages”), as well as to reasonable
2 attorneys’ fees and costs, as is allowed by statute, according to proof if deemed to be the
3 prevailing party.

4 Wherefore, plaintiffs pray that this court grant relief and damages as hereinafter stated.

5 **V. FIFTH CAUSE OF ACTION FOR UNFAIR BUSINESS PRACTICES IN**
6 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §17200,**
7 ***ET SEQ.***

8 (On Behalf of Plaintiffs JAREK MOLSKI and DISABILITY RIGHTS,
9 ENFORCEMENT, EDUCATION SERVICES: HELPING YOU HELP OTHERS, a
10 California public benefit corporation, and Against Defendants ESTATE OF JAMES F.
11 RUSSELL; and ROGER PATTERSON, an individual dba ROY’S DRIVE-IN,
12 inclusive)
13 (Business & Professions Code §17200, *et seq.*)

14 85. Plaintiffs replead and incorporate by reference, as if fully set forth again herein,
15 the allegations contained in paragraphs 1 through 84 of this complaint.

16 86. Defendants, and each of them, have had actual and constructive notice of the
17 Americans with Disabilities Act of 1990 and have seen places of public accommodation similar
18 to the public accommodations subject to this action made accessible to persons with
19 disabilities, *i.e.*, public accommodations with accessible parking and parking signage,
20 accessible food counters and accessible restrooms.

21 87. Defendants ESTATE OF JAMES F. RUSSELL; and ROGER PATTERSON,
22 an individual dba ROY’S DRIVE-IN, and each of them, and their agents, ostensible agents,
23 masters, servants, employers, employees, representatives, franchisors, franchisees, joint
24 venturers, alter egos, partners and/or associates, although having actual and constructive
25 knowledge of the Americans with Disabilities Act of 1990 and accessible elements of public
26 accommodations, have engaged in an unlawful and unfair business act or practice of the
27 California Business and Professions Code

17200. As used in this chapter, unfair competition shall mean
and include any unlawful, unfair or fraudulent business act or
practice and unfair, deceptive, untrue or misleading advertising
and any act prohibited by Chapter 1 (commencing with
Section 17500) of Part 3 of Division 7 of the Business and
Professions Code

(Calif. Bus. & Prof. Code §17200)

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1 in that defendants, and each of them, have intentionally and/or negligently failed to identify
2 and remove architectural barriers at the subject ROY'S DRIVE IN, thereby denying plaintiffs
3 and those similarly situated from the opportunity to enjoy the goods and services provided
4 therein.

5 88. Plaintiffs JAREK MOLSKI and DREES have the right to act as private
6 attorneys general to remedy such acts, as provided in sections 17204 and 17205 of the
7 California Business and Professions Code, to wit:

8 17204. Actions for any relief pursuant to this chapter shall be
9 prosecuted exclusively in a court of competent jurisdiction by the
10 Attorney General or any district attorney or by any county
11 counsel authorized by agreement with the district attorney in
12 actions involving violation of a county ordinance, or any city
13 attorney of a city, or city and county, having a population in
14 excess of 750,000, and, with the consent of the district attorney,
15 by a city prosecutor in any city having a full-time city prosecutor
16 or, with the consent of the district attorney, by a city attorney in
17 any city and county in the name of the people of the State of
18 California upon their own complaint or upon the complaint of
19 any board, officer, person, corporation or association or by any
20 person acting for the interests of itself, its members or the
21 general public.

22 17205. Unless otherwise expressly provided, the remedies or
23 penalties provided by this chapter are cumulative to each other
24 and to the remedies or penalties available under all other laws of
25 this state.

26 (Calif. Bus. & Prof. Code §§17204 and 17205)

27 Wherefore, plaintiffs pray that this court grant relief and damages as follows:

28 **PRAYER:**

Plaintiffs pray that this court award damages and provide relief as follows:

- I. **PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, et seq.)**
(On Behalf of Plaintiffs JAREK MOLSKI and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION SERVICES:HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants ESTATE OF JAMES F. RUSSELL; and ROGER PATTERSON, an individual dba ROY'S DRIVE-IN, inclusive)
(42 U.S.C. §12101, et seq.)

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2 1. For injunctive relief, compelling defendants ESTATE OF JAMES F.
3 RUSSELL; and ROGER PATTERSON, an individual dba ROY'S DRIVE-IN, inclusive, to
4 make the ROY'S DRIVE-IN, located at 1306 N. Main Street, Salinas, California, readily
5 accessible to and usable by individuals with disabilities, per Public Law 10 1-336, §308; and
6 to make reasonable modifications in policies, practice, eligibility criteria and procedures so as
7 to afford full access to the goods, services, facilities, privileges, advantages and
8 accommodations being offered.

9 2. For attorneys' fees, litigation expenses and costs of suit, if plaintiffs are deemed
10 the prevailing party; and

11 3. For such other and further relief as the court may deem proper.

12 **II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND**
13 **EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1**
14 **AND 54.3, ET SEQ.**

15 (On Behalf of Plaintiffs JAREK MOLSKI and DISABILITY RIGHTS,
16 ENFORCEMENT, EDUCATION SERVICES:HELPING YOU HELP OTHERS, a
17 California public benefit corporation, and Against Defendants ESTATE OF JAMES F.
18 RUSSELL; and ROGER PATTERSON, an individual dba ROY'S DRIVE-IN,
19 inclusive)
20 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

21 1. For injunctive relief, compelling defendants ESTATE OF JAMES F.
22 RUSSELL; and ROGER PATTERSON, an individual dba ROY'S DRIVE-IN, inclusive, to
23 make the ROY'S DRIVE-IN, located at 1306 N. Main Street, Salinas, California, readily
24 accessible to and usable by individuals with disabilities, per state law.

25 2. Statutory damages as afforded by Civil Code §54.3 for the date of incident and
26 for each day, from the inception of the filing of this complaint, on which defendants have
27 failed to remove barriers which denied plaintiffs and other persons with disabilities full and
28 equal access.

3. Attorneys' fees pursuant to Civil Code §54.3 and §55 and Code of Civil
Procedure §1021.5, if plaintiffs are deemed the prevailing party;

4. Punitive damages pursuant to Civil Code §3294;

5. For all costs of suit;

1 6. Prejudgment interest pursuant to Civil Code §3291;

2 7. Such other and further relief as the court may deem just and proper.

3 **III. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND**
4 **EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1**
5 **AND 54.3, ET SEQ.**

6 (On Behalf of Plaintiff JAREK MOLSKI, and Against Defendants ESTATE OF
7 JAMES F. RUSSELL; and ROGER PATTERSON, an individual dba ROY'S DRIVE-
8 IN, inclusive)
9 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

10 1. General and compensatory damages according to proof.

11 **IV. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE**
12 **SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE**
13 **§19955, ET. SEQ.**

14 (On Behalf of Plaintiffs JAREK MOLSKI and DISABILITY RIGHTS,
15 ENFORCEMENT, EDUCATION SERVICES:HELPING YOU HELP OTHERS, a
16 California public benefit corporation, and Against Defendants ESTATE OF JAMES F.
17 RUSSELL; and ROGER PATTERSON, an individual dba ROY'S DRIVE-IN,
18 inclusive)
19 (Health & Safety code §19955, *et seq.*)

20 1. For injunctive relief, compelling defendants ESTATE OF JAMES F.
21 RUSSELL; and ROGER PATTERSON, an individual dba ROY'S DRIVE-IN, inclusive, to
22 make ROY'S DRIVE-IN, located at 1306 N. Main Street, Salinas, California, readily
23 accessible to and usable by individuals with disabilities, per state law.

24 2. For attorneys' fees pursuant to Code of Civil Procedure §1021.5, Civil Code
25 §55, and/or, alternatively, Health & Safety Code §19953, if plaintiffs are deemed the
26 prevailing party;

27 3. For all costs of suit;

28 4. For prejudgment interest pursuant to Civil Code §3291;

5. Such other and further relief as the court may deem just and proper.

V. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE
SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE
§19955, ET. SEQ.

(On Behalf of Plaintiff JAREK MOLSKI, and Against Defendants ESTATE OF
JAMES F. RUSSELL; and ROGER PATTERSON, an individual dba ROY'S DRIVE-
IN, inclusive)
(Health & Safety code §19955, *et seq.*)

1. General and compensatory damages according to proof under Civil Code
§§52(a) and 54.3;

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2 2. Special and consequential damages according to proof under Civil Code §§52(a)
3 and 54.3.

4 **VI. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO**
5 **FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,**
6 **PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL**
7 **CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

8 (On Behalf of Plaintiffs JAREK MOLSKI and DISABILITY RIGHTS,
9 ENFORCEMENT, EDUCATION SERVICES:HELPING YOU HELP OTHERS, a
10 California public benefit corporation and Against Defendants ESTATE OF JAMES F.
11 RUSSELL; and ROGER PATTERSON, an individual dba ROY’S DRIVE-IN,
12 inclusive)
13 (California Civil Code §§51, 51.5, et seq.)

14 1. All statutory damages as afforded by Civil Code §52(a) for the date of incident
15 and for each day on which defendants have denied to plaintiffs full and equal accommodations,
16 advantages, facilities, privileges or services in any business establishment or have otherwise
17 denied to plaintiffs and persons with physical disabilities equal access;

18 2. Attorneys’ fees pursuant to Civil Code §52(a), if plaintiffs are deemed the
19 prevailing party;

20 3. Punitive damages pursuant to Civil Code §3294;

21 4. For all costs of suit;

22 5. Prejudgment interest pursuant to Civil Code §3291; and

23 6. Such other and further relief as the court may deem just and proper.

24 **VII. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO**
25 **FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,**
26 **PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL**
27 **CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

28 (On Behalf of Plaintiff JAREK MOLSKI, and Against Defendants ESTATE OF
JAMES F. RUSSELL; and ROGER PATTERSON, an individual dba ROY’S DRIVE-
IN, inclusive)
(California Civil Code §§51, 51.5, et seq.)

1. General and compensatory damages to plaintiff JAREK MOLSKI according to
proof.

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2 **VIII. PRAYER FOR FIFTH CAUSE OF ACTION FOR UNFAIR BUSINESS**
3 **PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS AND**
4 **PROFESSIONS CODE §17200, ET SEQ.**

(On Behalf of Plaintiffs JAREK MOLSKI and DISABILITY RIGHTS,
ENFORCEMENT, EDUCATION SERVICES: HELPING YOU HELP OTHERS, a
California public benefit corporation, and Against Defendants ESTATE OF JAMES F.
RUSSELL; and ROGER PATTERSON, an individual dba ROY'S DRIVE-IN,
inclusive)
(Business & Professions Code §17200, et seq.)

7 1. For injunctive relief, compelling defendants ESTATE OF JAMES F.
8 RUSSELL; and ROGER PATTERSON, an individual dba ROY'S DRIVE-IN, inclusive, to
9 make ROY'S DRIVE-IN, located at 1306 N. Main Street, Salinas, California, readily
10 accessible to and usable by individuals with disabilities, per state law.

11 2. Attorneys' fees pursuant to applicable code if plaintiffs are deemed the
12 prevailing party.

13 Dated: May 17, 2004

THOMAS E. FRANKOVICH
A PROFESSIONAL LAW CORPORATION

15 By: _____ /s/
16 THOMAS E. FRANKOVICH
17 Attorneys for Plaintiffs JAREK MOLSKI and
18 DISABILITY RIGHTS, ENFORCEMENT,
EDUCATION SERVICES:HELPING YOU HELP
OTHERS, a California public benefit corporation

19 **DEMAND FOR JURY TRIAL**

20 Plaintiffs hereby demand a jury for all claims for which a jury is permitted.

21 Dated: May 17, 2004

THOMAS E. FRANKOVICH
A PROFESSIONAL LAW CORPORATION

23 By: _____ /s/
24 THOMAS E. FRANKOVICH
25 Attorneys for Plaintiffs JAREK MOLSKI and
26 DISABILITY RIGHTS, ENFORCEMENT,
EDUCATION SERVICES:HELPING YOU HELP
OTHERS, a California public benefit corporation